

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
SOUTHEASTERN DIVISION

OPAL L. YARBROUGH,

Plaintiff,

vs.

PROPERTY & CASUALTY INSURANCE)
COMPANY OF HARTFORD,)

Defendant.)

Case No. _____

NOTICE OF REMOVAL

COMES NOW Defendant Property & Casualty Insurance Company of Hartford ("Hartford") and by and through counsel, states the following for its Notice of Removal of the Plaintiff's cause of action to this Court from the Circuit Court of Dunklin County, Missouri:

1. Plaintiff's initial petition was filed in the Circuit Court of Dunklin County, Missouri, on or about December June 18, 2010. That petition is attached hereto as "Exhibit A."
2. A summons and petition were received by the Missouri Department of Insurance on or about July 12, 2010. Defendant Hartford received that summons and petition from the Missouri Department of Insurance on or about July 16, 2010. A copy of the summons and copy of service of process on the Department of Insurance are attached hereto as "Exhibit B" and "Exhibit C."
3. The petition alleges that Plaintiff is owed benefits under a certain policy of insurance issued by Hartford to Plaintiff containing underinsured motorist coverage of \$100,000.00 per person and \$300,000.00 per accident.
4. Plaintiff specifically alleges that she is entitled to underinsured motorist benefits under said policy in the amount of \$100,000.00 as well as damages for vexatious refusal under

Sections 375.296 and 375. 420 R.S.Mo.

5. Removal of an action from state court to federal court is proper if none of the parties in interest joined and served as defendants is a citizen of the state in which such action is brought. 28 U.S.C. §1441(b).

6. Hartford is a corporate defendant and was incorporated in the State of Indiana, with its principal place of business in the State of Connecticut.

7. Plaintiff is a resident of the State of Missouri.

8. Further, the District Courts of the United States shall have original jurisdiction of all civil actions wherein the amount in controversy exceeds the sum of \$75,000.00, exclusive of interest and costs, and the cause of action is between citizens of two separate states. 28 U.S.C. §1332(a).

9. In her petition, Plaintiff is alleging that she is owed underinsured motorist benefits under the subject policy of \$100,000.00.

10. The amount in controversy exceeds the \$75,000.00 jurisdictional limits.

11. Therefore, complete diversity exists between the only two parties involved in this case, and the amount in controversy exceeds the required jurisdictional limits thereby making Plaintiff's cause of action removable to this court.

WHEREFORE, Defendant Hartford respectfully requests this Court to remove Plaintiff's Petition for Damages to the United States District Court for the Eastern District of Missouri, Southeastern Division.

/s/ Scott C. Harper

Scott C. Harper, #14582
BRINKER & DOYEN, L.L.P.
34 N. Meramec Ave., 5th Floor
Clayton, MO 63105
Telephone: (314) 863-6311
Facsimile: (314) 863-8197
Attorneys for Defendant

CERTIFICATE OF SERVICE

A true and accurate copy of the foregoing document was mailed, U.S. Mail, postage prepaid this 26th day of July, 2010 to:

Jason M. Scherer
CROW, REYNOLDS, SHETLEY,
MCVEY & SCHERER, LLP
308 First Street/P.O. Box 189
Kennett, MO 63857
Telephone: (573) 888-4664
Facsimile: (573) 888-0322
Email: Jason@crsmslaw.com
Attorneys for Plaintiff

/s/ Scott C. Harper

IN THE CIRCUIT COURT OF DUNKLIN COUNTY, MISSOURI

DIVISION I

JUN 18 2010

DUNKLIN COUNTY
CIRCUIT CLERK

Opal L. Yarbrough,

Plaintiff,

v.

Property & Casualty Insurance
Company of Hartford,

Defendant.

Case No: 10DU-CC00081

LAW DEPARTMENT

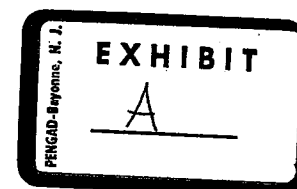
JUL 16 2010

PETITION

Litigation Group

COMES NOW Plaintiff, Opal L. Yarbrough, by and through her attorney, Jason M. Scherer of Crow, Reynolds, Shetley, McVey & Scherer, LLP, and for and in support of her cause of action against Defendant, Property & Casualty Insurance Company of Hartford, states as follows:

1. That at all times relevant hereto, Plaintiff Opal L. Yarbrough was and is a resident of the city of Steele, state of Missouri, residing at 400 South Cooter Road, Steele, Missouri 63877.
2. Defendant Property & Casualty Insurance Company of Hartford was at all times relevant hereto and remains an automobile liability insurance company licensed to do and transact business in the state of Missouri with its home office located in Indianapolis, Indiana.
3. Defendant executed and delivered its liability automobile policy of insurance to Plaintiff Opal L. Yarbrough. Said policy was issued under number 55PHJ392879 and was effective at all times relevant herein.
4. The policy provided for underinsured motorist protection in the sum of \$100,000.00 per person with a maximum of \$300,000.00 per accident. A photo copy of the declaration sheet for said policy is attached hereto and incorporated herein by this reference as if fully set forth herein and is marked Exhibit A.
5. Said policy of insurance includes the following conditions, terms, clauses, definitions and insuring agreements, among others:



Part C Section 2

Underinsured Motorists Coverage Insuring Agreement

(A.) We will pay compensatory damages which an insured is legally entitled to recover from the owner or operator of an underinsured motorist vehicle because of bodily injury:

1. Sustained by an insured; and
2. Caused by an accident.

The owner's or operator's liability for these damages must arise out of the ownership, maintenance or use of the underinsured motorist vehicle.

6. A complete copy of the relevant policy language is attached hereto, incorporated herein by this reference as if fully set forth herein and marked as Exhibit B.

7. On or about the 2nd day of February, 2009, at approximately 2:23 p.m., Plaintiff Opal L. Yarbrough was traveling in her vehicle on the Wal-Mart parking lot in Kennett, Dunklin County, Missouri.

8. That at the aforesaid place and time, Mark D. Middleton was driving a 1999 GMC pickup truck in the same parking lot and as a result of his negligence and failure to maintain proper care and control of his vehicle, caused his vehicle to collide with the vehicle being driven by Plaintiff.

9. As a result of Mark D. Middleton's negligence, Plaintiff Yarbrough was caused to sustain serious and permanent injuries and incurred significant medical bills.

10. Said Mark D. Middleton was insured by a policy of insurance issued by GEICO Insurance (policy number 4141-19-63-39) that provided maximum benefits of \$100,000.00 per person per accident.

11. GEICO Insurance, on behalf of Mark D. Middleton, has tendered its policy limits of \$100,000.00 to Opal L. Yarbrough.

12. Opal L. Yarbrough has suffered injuries, medical bills and damages in excess of \$200,000.00 and, therefore, the vehicle being driven by Mark D. Middleton was an underinsured

motor vehicle as defined under the policy of Defendant.

13. Defendant has failed and refused to pay the underinsured policy limits of \$100,000.00, even though it is aware that Plaintiff's damages are in excess of the total liability coverage that has been paid to date by GEICO Insurance on behalf of Mark D. Middleton.

14. Plaintiff Opal L. Yarbrough was at all times herein relevant an insured for purposes of underinsured motorist protection.

15. That all of the duties and obligations imposed under the policy as a condition precedent to recovery have been met, including providing notice of this claim.

16. Plaintiff is entitled to damages allowable under RSMo § 375.296 and 375.420.

WHEREFORE, Plaintiff Opal L. Yarbrough requests judgment against Defendant Property & Casualty Insurance Company of Hartford; that this Court decree, adjudge and determine that Plaintiff was damaged as a result of an accident revolving an underinsured vehicle, that she sustained damages in excess of the policy limits of the applicable liability policies, that the injuries and damages of the Plaintiff are in excess of \$200,000.00 and that the entire underinsured policy limits of \$100,000.00 is due and payable to the Plaintiff with accrued interest; and for all damages allowable under RSMo § 375.296 and RSMo § 375.420, including, but not limited to, interest and attorney fees, taxable costs of this action and for such other and further relief as this Court may deem just and proper.

CROW, REYNOLDS, SHETLEY,
McVEY & SCHERER, LLP
Attorneys At Law
308 First Street/P.O. Box 189
Kennett, Mo 63857
Telephone: 573-888-4664
Facsimile: 573-888-0322
Email: jason@crsmefaw.com

By: 
Jason M. Scherer 58791

This ENDORSEMENT Page, With Policy Jacket Form 8524 And Forms
And Endorsements Listed Below AMENDS your PERSONAL AUTO POLICY
INSURER: PROPERTY & CASUALTY INSURANCE COMPANY OF HARTFORD
200 EXECUTIVE BLVD., SOUTHTON, CT 06489

DUPLICATE COPY

CH.# 01 EFF.01-02-09

THE HARTFORD

DECLARATIONS

POLICY NO. 55 PHJ392879

COPY

Named Insured and
Mailing AddressYARBROUGH, FORREST PAUL & OPAL
400 S COOTER RD
STEELE, MO 63877Policy Period 12:01 A.M. Standard Time
at the Address of the Named Insured

FROM 01-02-09 TO 01-02-10 TERM: 1 YEAR

BILLING ID NUMBER: 84381955

Producer Name:

Code: 254500 R9

CUSTOMER SERVICE: 1-800-423-6789

CLAIM SERVICE: 1-877-805-9918

TOTAL POLICY PREMIUM: \$ 456.00

Auto No.	Description of Autos or Trailers	Vehicle ID Number	Class	Terr.
4	98 GMC SIERRA C1500	2GTEC19M9W1507260	D742DJ	017

COVERAGE IS PROVIDED ONLY WHERE A PREMIUM IS SHOWN FOR THE AUTO AND COVERAGE.

COVERAGES AND LIMITS OF LIABILITY

PREMIUMS BY AUTO

A. LIABILITY

BODILY INJURY	EACH PERSON	\$ 100,000	
	EACH ACCIDENT	\$ 300,000	\$ 155.00
PROPERTY DAMAGE	EACH ACCIDENT	\$ 100,000	\$ 82.00

B. MEDICAL PAYMENTS	EACH PERSON	\$ 5,000	\$ 25.00
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C. UNINSURED MOTORISTS

BODILY INJURY	EACH PERSON	\$ 100,000	
	EACH ACCIDENT	\$ 300,000	\$ 16.00

UNDERINSURED MOTORISTS

BODILY INJURY	EACH PERSON	\$ 100,000	
	EACH ACCIDENT	\$ 300,000	\$ 6.00

D. DAMAGE TO YOUR AUTO

OTHER THAN COLLISION

ACV LESS DEDUCTIBLE \$

COLLISION

ACV LESS DEDUCTIBLE \$

AUTO

ACV = ACTUAL CASH VALUE

4

500 \$ 63.00

500 \$ 109.00

EXHIBIT

A

COUNTERSIGNED BY

Frederic R. Goss

AUTHORIZED AGENT

CONTINUED ON PAGE 2

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FORM 6-4800-0 (Ed 2/01) AP

DECLARATIONS (CONTINUED)

POLICY NO. 55 PHJ392879

NAMED INSURED: YARBROUGH, FORREST PAUL & OPAL

4

TOTAL PREMIUM EACH AUTO \$ 456.00

ACCT NO. 84381955

RETURN PREMIUM \$ 355.00

LOSS PAYEE/ADDITIONAL INSURED
AUTO BANK STAR OF THE
P4 100 S WALNUT ST
STEELE

MO 638771713

FORMS AND ENDORSEMENTS NOW MADE PART OF THIS POLICY:

A-4832-1 LIFETIME CONTINUATION AGREEMENT - AUTO
A-5719-0 COVERAGE FOR DAMAGE TO YOUR AUTO EXCLUSION ENDORSEMENT
A-5893-0 PERSONAL AUTO INSURANCE PROGRAM SPECIAL EXTENSIONS OF COVERAGE
A-5260-1 WAIVER OF COLLISION DEDUCTIBLE
A-5552-0 SUPPLEMENTAL DEATH BENEFIT ENDORSEMENT
A-5579-2 LIMITED MEXICO COVERAGE
A-5697-0 MISSOURI SAFE DRIVER INSURANCE PLAN
A-5865-1 DISAPPEARING COLLISION DEDUCTIBLE
A-6046-0 RECOVERCARE ESSENTIAL SERVICES COVERAGE
A-6037-2 AMENDMENT OF POLICY PROVISIONS - MISSOURI
A-6075-0 ENHANCED COV PERM INSTALL AUDIO VISUAL DATA REC TRANS EQUIP

THE AUTOS DESCRIBED IN THIS POLICY ARE PRINCIPALLY GARAGED AT THE ADDRESS SHOWN ON PAGE 1

RATING INFORMATION:

AUTO 4 SYMBOL E

Because a vehicle is equipped with an air bag safety feature your policy premium has been reduced.

Your single car policy has been rated with a multi car credit.

Call us toll-free at 1-800-423-6789 if you have any questions or changes to your policy.

If you're ever in an accident ... report it right away! Put the resources, reputation and resolve of The Hartford to work for you immediately!
Call 1-877-805-9918.

DECLARATIONS (CONTINUED)

POLICY NO. 55 PHJ392879

NAMED INSURED: YARBROUGH, FORREST PAUL & OPAL

DRIVER INFORMATION

NO.	NAME	DOB	MS	SEX	OCC	LIC #	DT	LIC
1	YARBROUGH, FORREST-P	053131	M	M	RETIRED	500344113	MO	053147
2	YARBROUGH, OPAL	011939	M	F	RETIRED	425660013	MO	011955
3	YARBROUGH, LYNN	050462	S	M	COACH	491809347	MO	050478



IN THE 35TH JUDICIAL CIRCUIT COURT, DUNKLIN COUNTY, MISSOURI

Judge or Division: STEPHEN R SHARP	Case Number: 10DU-CC00081
Plaintiff/Petitioner: OPAL L YARBROUGH	Plaintiff's/Petitioner's Attorney/Address JASON M SCHERER ATTORNEY AT LAW P O BOX 189 KENNETT, MO 63857
Defendant/Respondent: PROPERTY & CASUALTY INSURANCE COMPANY OF HARTFORD	Court Address: PO Box 567 KENNETT, MO 63857
Nature of Suit: CC Breach of Contract	

FILED

JUN 18 2010

DUNKLIN COUNTY
CIRCUIT CLERK

SOP RECEIPT DATE

JUL 12 2010

(Date File Stamp)

Summons in Civil Case

The State of Missouri to: PROPERTY & CASUALTY INSURANCE COMPANY OF HARTFORD

Alias:

301 W HIGH STREET
ROOM 530
JEFFERSON CITY, MO 65101SERVE: SECRETARY OF
STATE (DIRECTOR OF INSURANCE)

COURT SEAL OF



DUNKLIN COUNTY

You are summoned to appear before this court and to file your pleading to the petition, a copy of which is attached, and to serve a copy of your pleading upon the attorney for Plaintiff/Petitioner at the above address all within 30 days after receiving this summons, exclusive of the day of service. If you fail to file your pleading, judgment by default may be taken against you for the relief demanded in the petition.

Date

Further Information:

Sheriff's or Server's Return

Note to serving officer: Summons should be returned to the court within thirty days after the date of issue.

I certify that I have served the above summons by: (check one)

- ☐ delivering a copy of the summons and a copy of the petition to the Defendant/Respondent.
☐ leaving a copy of the summons and a copy of the petition at the dwelling place or usual abode of the Defendant/Respondent with a person of the Defendant's/Respondent's family over the age of 15 years.
☐ (for service on a corporation) delivering a copy of the summons and a copy of the petition to

(name) (title)

☐ other (address)

Served at (County/City of St. Louis), MO, on (date) at (time).

Printed Name of Sheriff or Server

Signature of Sheriff or Server

Must be sworn before a notary public if not served by an authorized officer:

Subscribed and sworn to before me on (date).

(Seal)

My commission expires:

Date

Notary Public

Sheriff's Fees

Summons \$
 Non Est \$
 Sheriff's Deputy Salary \$
 Supplemental Surcharge \$ 10.00
 Mileage \$ (miles @ \$. per mile)
 Total \$

A copy of the summons and a copy of the petition must be served on each Defendant/Respondent. For methods of service on all classes of suits, see Supreme Court Rule 54.

EXHIBIT

B

State of Missouri

**Department of Insurance, Financial Institutions and
Professional Registration**



TO: Corporate Secretary (or United States Manager or Last Appointed General Agent) of

PROPERTY & CASUALTY INSURANCE COMPANY OF HARTFORD

(Name of Insurance Company)

CSC LAWYERS INCORPORATING SERVICE CO 221 BOLIVAR STREET

(Street Address or P.O. Box)

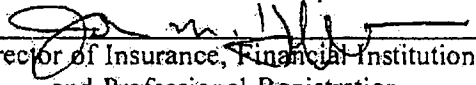
JEFFERSON CITY, MO 65101

(City or Town, State and Zip Code)

RE: Court: DUNKLIN COUNTY Case Number: 10DU-CG00081

You will take notice that original process in the suit against you, a copy of which is attached hereto, was duly served upon you at Jefferson City, Missouri, by serving the same on the Director of the Department of Insurance, Financial Institutions and Professional Registration of the state of Missouri, Dated at Jefferson City, Missouri

this 12TH day of JULY, 2010



Director of Insurance, Financial Institutions
and Professional Registration

PENGAD-Bayona, N. J.

EXHIBIT

C